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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Catarino Torres Valenzuela,
10 Petitioner,
11 v.
12 Charles L. Ryan, *et al.*,
13 Respondents.
14

No. CV-17-01854-PHX-JJT (BSB)
ORDER

15 Before the Court is the report and Recommendation (“R&R”) (Doc. 14) submitted
16 by United States Magistrate Judge Bridget S. Bade concluding that the Court should deny
17 and dismiss with prejudice the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §
18 2254. (Doc. 1.) Petitioner timely filed an Objection to the R&R (Doc. 18), and Respondent
19 timely filed a Reply to the Objection. (Doc. 19.) Having considered all of the filings, the
20 Court will adopt the R&R in full and deny the Petition.

21 Judge Bade carefully considered each of Petitioner’s arguments in an exhaustive
22 26-page R&R. She is correct that Petitioner did not fairly present Ground Two as a federal
23 claim to the state court; thus that court did not have a fair opportunity to consider the ground
24 and rectify it if necessary—a key purpose of Section 2254. Due process under state law—
25 which Petitioner did present to the Arizona court—is not the same thing as due process in
26 federal constitutional law. Because Petitioner is now time-barred from returning to state
27 court to properly present the federal due process ground, among other procedural bars, and
28 because he has failed to show cause or prejudice as set forth in *Coleman v. Thompson*, 501

1 U.S. 722, 750 (1991), his failure to raise the ground is not excused.

2 Judge Bade also correctly concluded that while properly exhausted before the state
3 court, Petitioner's remaining grounds for relief fail on the merits. His Confrontation Clause
4 argument in Ground One regarding the court interpreter fails. The state appellate court's
5 conclusion that the trial court, in using a certified interpreter for all facets of the trial, did
6 not violate the Constitution was not based on an unreasonable determination of fact and
7 was not an unreasonable application of Supreme Court precedent.

8 Petitioner's ineffective assistance arguments in Grounds Three and Four also fail,
9 as Judge Bade concluded. The state trial court held an evidentiary hearing on Petitioner's
10 claim that counsel denied his request to testify (Ground Three), and concluded Petitioner's
11 testimony at that hearing was not credible. The state court is entitled under law to make
12 such a credibility determination, and upon review of the transcript of that hearing, the
13 Arizona Court of Appeals affirmed the trial court's decision. Such was not an unreasonable
14 determination of fact, nor contrary to or an unreasonable application of Supreme Court
15 precedent. The state court also evaluated Petitioner's argument that trial counsel's failure
16 to call certain witnesses constituted ineffective assistance (Ground Four), and denied post
17 conviction relief on that argument, finding such decision to be sound trial strategy and not
18 deficient performance. That a permissible conclusion on the facts of this matter per
19 *Strickland v. Washington*, 466 U.S. 688 (1984).

20 Finally, Judge Bade properly concluded that Petitioner's claim of actual innocence
21 (Ground Five) is unsupported by a sufficient showing. Judge Bade exhausts each of
22 Petitioner's discrete arguments on this point, and the Court will not repeat them here.

23 Petitioner's Objection (Doc. 18) simply restates the law and attempts to re-argue
24 points he previously already offered in his Petition. It does not refute any of the law the
25 R&R sets forth as applicable, nor does it show any analytical errors in Judge Bade's
26 application of the facts of the matter to that law.

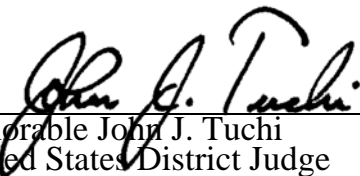
27 IT IS ORDERED adopting the R&R in this matter (Doc. 14) and overruling the
28 Objection thereto. (Doc. 18.)

1 IT IS FURTHER ORDERED denying and dismissing with prejudice the Petition
2 for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Doc. 1.)

3 IT IS FURTHER ORDERED denying a Certificate of Appealability and leave to
4 proceed in forma pauperis on appeal, because 1) the dismissal of Ground Two is justified
5 by a plain procedural bar, and reasonable jurists would not find that procedural ruling
6 debatable; and 2) Petitioner has not substantially shown denial of a constitutional right with
7 regard to the remaining grounds.

8 IT IS FURTHER ORDERED directing the Clerk of Court to terminate the matter.

9 Dated this 17th day of December, 2018.

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12 Honorable John J. Tuchi
13 United States District Judge
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